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4 JOSE ANTONIO AGUILAR  
5 JARAMILLO,

6 Plaintiff,  
7  
8 v.  
9

CITY OF SAN MATEO, et al.,  
10 Defendants.

Case No. [13-cv-00441-NC](#)

**ORDER TO SHOW CAUSE WHY  
DEFENDANTS AND THEIR COUNSEL  
SHOULD NOT BE SANCTIONED FOR  
VIOLATING CONFIDENTIALITY OF  
SETTLEMENT CONFERENCE**

10 Defendants through their counsel Jeffrey Vucinich are ordered to show cause in  
11 writing by January 28 at 5:00 p.m., and to appear for hearing on January 29 at 2:00 p.m., in  
12 Courtroom 7, San Jose federal courthouse, as to why they should not be sanctioned for  
13 violating the rules of this Court by filing a letter on January 26, 2015, that plainly  
14 contained confidential settlement conference communications from plaintiff. Dkt. No.  
15 111.  
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The letter, filed in ECF by defendants' lead trial counsel Vucinich and addressed to  
17 me, the undersigned trial judge, states that it is "based on statements made in Plaintiff's  
18 Settlement Conference Statement" submitted to Magistrate Judge Lloyd. Dkt. No. 111 at  
19 2. Defendants' letter then excerpts three paragraphs from plaintiff's submission to  
20 Magistrate Judge Lloyd. Dkt. No. 111. Magistrate Judge Lloyd has scheduled a  
21 settlement conference for January 29. Dkt. No. 86 (settlement conference referral).  
22

In the letter, defendants rely on the plaintiff's settlement conference  
23 communications to request a further Court order on motions in limine. Dkt. No. 111.  
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Under Alternative Dispute Resolution (ADR) Local Rule 7-5(a), "all counsel and  
25 parties" shall treat as "confidential information" the contents of any written settlement  
26 conference statement. "Confidential information" shall not be: (1) Disclosed to anyone not  
27 involved in the litigation; (2) Disclosed to the assigned judge; or (3) Used for any purpose,  
28

1 including impeachment, in any pending or future proceeding in this court.

2 Here, defendants' January 26 filing appears to violate ADR Local Rule 7-5(a) by  
3 disclosing to the assigned judge the contents of plaintiff's confidential settlement  
4 conference statement.

5 In addition to violating the rules for settlement conferences, defendants' January 26  
6 letter is improper because it violates Federal Rule of Civil Procedure 7(b). A request for a  
7 court order must be made by motion, stating with particularity the relief sought and the  
8 grounds for seeking relief. Fed. R. Civ. P. 7(b). Finally, the communication appears to be  
9 a bad faith effort to undermine the settlement process.

10 The Court will consider as a proportionate sanction all the penalties provided for  
11 under the Federal Rules of Civil Procedure and the Court's inherent authority, including a  
12 finding of civil contempt of court, monetary sanction, exclusion of evidence, striking of  
13 pleadings, default judgment, and staying the proceedings until the Court's orders are  
14 obeyed.

15 Plaintiff Jaramillo may (but is not required to) respond in writing by January 29 at  
16 9:00 a.m. and may appear at the OSC hearing.

17  
18 **IT IS SO ORDERED.**

19  
20 Dated: January 27, 2015

  
21 NATHANAEL M. COUSINS  
22 United States Magistrate Judge